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Remarks

Claims 1-5, 7-36 are currently pending in this application.

The claims have been amended to more particularly point out and clearly define what Applicants consider to be their invention. The formula to which the Examiner objected has been replaced by the term "fatty acid" which is supported in the specification at page 5, line 20, through page 6, line 2. In addition, claim 1 has been amended to include the limitation of claim 6.

Claim 6 has been cancelled.

New claim 36 has been entered and is equivalent to claim 1 before amendment.

Applicants respectfully submit that they deem the amendments to claims 1 and 9 to have overcome the rejections of the claims under 35 U.S.C. 112.

Applicants also submit that the amendment to claim 1 overcomes the rejections under 35 U.S.C. 102(b) over Lion Corp. (JP09168395A) and Lion Corp. (JP09271387A).

The claims stand rejected under 35 U.S.C. 102(b) anticipated by Lion Corp. (JP09168395A; hereinafter Lion Corp. '395).

Claim 1 has been amended to indicate that the composition is free of nonionic surfactants which was previously the limitation of claim 6. Lion Corp. '395 discloses a process for the preparation of a sugar fatty acid ester in which at least one saccharide selected from a monosaccharide having 5 to 7 carbon atoms, an ether compound between the monosaccharide having 5 to 7 carbon atoms and a monovalent alcohol, a sugar alcohol having 4 to 6 carbon atoms and their derivative condensates is reacted with at least one saturated or unsaturated fatty acid having from 6 to 22 carbon atoms, an ester of the fatty acid with a 1-4 C lower alcohol in the presence of an organic solvent using a lipase.

Applicants respectfully submit that as described in Lion Corp. '395, the polyglycoside which is used in the composition is a nonionic surfactant and the reaction product of the saccharide with the fatty acid provides an additional moiety to the

PAGE 9/13 * RCVD AT 10/31/2007 4:45:20 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-6/3 * DNIS:2738300 * CSID:215 628 1345 * DURATION (mm-ss):03-16

nonionic surfactant. Applicants respectfully submit that Lion Corp. '395 would neither teach nor suggest to one skilled in the art the composition of claim 1 or the compositions of claims 2-5 which are dependent upon claim 1. In addition, claim 5 is separately patentable over Lion Corp. '395 in that Lion Corp. neither teaches nor suggests a composition wherein (a) and (b) are employed in a ratio by weight of 2:1.

In view of the above discussion, Applicants respectfully request that the rejection under 35 U.S.C. 102(b) over Lion Corp. '395 be reconsidered and withdrawn.

Claims 1-6 stand rejected under 35 U.S.C. 102(b) as anticipated by Lion Corp. (JP09271387A; hereinafter Lion Corp. '387).

The process of Lion Corp. '387 is to produce an ester of an alkyl polyglycoside. As is well known in the art, alkyl polyglycosides are known nonionic surfactants and the addition of the fatty acid moiety to the alkyl polyglycoside maintains the status of a nonionic surfactant. Applicants therefore respectfully submit that Lion Corp. '387 neither teaches nor suggests the present invention in view of the fact that Lion Corp. '387 neither teaches nor suggests a mixture of a fatty acid ester and cyclohexanone which is nonionic surfactant-free.

Applicants invite the Examiner's attention to pertinent decisions of the courts related to the composition of claim1 and the composition of new claim 36.

It is well accepted in patent law, that an accidental and unappreciated disclosure does not anticipate a later invention.

Applicants invite the Examiner's attention to Tilghman v. Proctor, 102US707(1881). In Tilghman v. Proctor, the Supreme Court held that the "accidental and unwitting" production of a certain process did not constitute anticipation.

In Eibel Process Co. v Minnesota & Ontario Paper Co., the Supreme Court held that accidental results, not intended and not appreciated, do not constitute anticipation. (Eibel Process Co. v Minnesota & Ontario Paper Co., 261US45(1923). Applicants also invite the Examiner's attention to International Nickel Co. v Ford Motor Co., 166F.SUPP.551,119USPQ72 (S.D.N.Y. 1958). Ludlum Steel Co. v. Terry 37F.2d153,

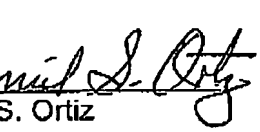
PAGE 10/13 * RCVD AT 10/31/2007 4:45:20 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-6/3 * DNIS:2738300 * CSID:215 628 1345 * DURATION (mm-ss):03-16

164(N.D.N.Y. 1928) and Edison Elec. Light Co. v. Novelty Incandescent Lamp Co., 167F.977, 980(3dCir. 1909) which stated in practice, in other forms, it sometimes happened that the glass, by mistake ran down onto and over the point of union with the platinum thus realizing, as it is said, the construction of a patent. But no such accidental and fugitive is occurrence of account. . . not only was it not understood or appreciated, but it was actually made the grounds of rejection, the lamp, when it happened, being regarded as imperfect and thrown out. It thus gave nothing to the world, standing in the way of discovery, indeed instead of promoting it and is thus entitled to no consideration.

Applicants respectfully submit that the line of cases beginning with Tilghman v Proctor clearly indicates that an accidental unappreciated disclosure does not anticipate a similar invention. Applicants therefore respectfully request that the rejection of the claims under 35 U.S.C. 102(b) over JP '395 and JP '387 be reconsidered and withdrawn.

In view of the amendments entered in the claims and the above discussion, Applicants respectfully submit that the application is in condition for allowance and favorable consideration is requested.

Respectfully submitted,



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PAGE 11/13 * RCVD AT 10/31/2007 4:45:20 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-6/3 * DNIS:2738300 * CSID:215 628 1345 * DURATION (mm-ss):03-16